



Reprinted
February 19, 2016

ENGROSSED SENATE BILL No. 20

DIGEST OF SB 20 (Updated February 18, 2016 2:06 pm - DI 102)

Citations Affected: IC 22-1; IC 22-2; IC 22-4; noncode.

Synopsis: Workforce policies. Provides that a local governmental unit may not establish, mandate, or otherwise require an employer to provide to an employee who is employed within the jurisdiction of the unit a scheduling policy that exceeds the requirements of federal or state law, rules, or regulations, unless federal or state law provides otherwise. Sets forth criteria for determining whether a qualified marketplace contractor is an independent contractor of a qualified marketplace platform. Provides that an attorney who represents an employer, an employing unit, or a claimant in a claim for unemployment benefits (benefits) pending before an administrative law judge, the review board, or another individual who adjudicates claims must be: (1) an attorney in good standing admitted to the practice of law in Indiana; or (2) an attorney in good standing admitted to the practice of law in another state who has been granted temporary (Continued next page)

Effective: Upon passage; July 1, 2016; January 1, 2017.

Boots, Walker, Randolph Lonnie M
(HOUSE SPONSORS — HARMAN, GUTWEIN)

January 5, 2016, read first time and referred to Committee on Pensions & Labor.
January 7, 2016, reported favorably — Do Pass.
January 14, 2016, read second time, ordered engrossed. Engrossed.
January 19, 2016, read third time, passed. Yeas 48, nays 2.

HOUSE ACTION

February 8, 2016, read first time and referred to Committee on Employment, Labor and Pensions.
February 16, 2016, amended, reported — Do Pass.
February 18, 2016, read second time, amended, ordered engrossed.

ES 20—LS 6193/DI 96



Digest Continued

admission to the state bar under the Rules for Admission to the Bar and the Discipline of Attorneys adopted by the supreme court. Specifies the persons that may represent an employer or employing unit, or a claimant, having an interest in a pending claim for benefits. Provides that a claimant may also designate a lay person of the claimant's choice to assist the claimant in the presentation of the claimant's case. Directs the department of workforce development to update its rules concerning representation of parties involved in claims for benefits. Urges the legislative council to assign to the interim study committee on employment and labor or another appropriate interim study committee during the 2016 legislative interim the topics of employee misclassification, payroll fraud, and the use of independent contractor status.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 20

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-1-6 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]:

4 **Chapter 6. Classification of Qualified Marketplace Contractors**
5 **Sec. 1. The following definitions apply throughout this chapter:**

6 (1) "Person" means an individual, a partnership, a
7 corporation, a limited liability company, or other
8 organization.

9 (2) "Qualified marketplace contractor" means a person that
10 enters into an agreement with a qualified marketplace
11 platform to use the qualified marketplace platform's digital
12 application or digital platform to provide services to an
13 individual or entity that seeks to obtain the services.

14 (3) "Qualified marketplace platform" means a person that
15 operates a digital application or digital platform that
16 facilitates the provision of services by a qualified marketplace
17 contractor to an individual or entity that seeks to obtain the



1 services.

2 Sec. 2. For the purpose of construing any statute, rule,
3 ordinance, or resolution, including IC 22-3 and IC 22-4, a qualified
4 marketplace contractor is to be treated as an independent
5 contractor if the following conditions are met:

6 (1) Substantially all of the remuneration received by the
7 qualified marketplace contractor for the services that the
8 qualified marketplace contractor performs, whether paid in
9 cash or some other form, is directly related to the
10 performance of the services or other output rather than the
11 number of hours worked.

12 (2) The services performed by the qualified marketplace
13 contractor are governed by a written contract executed
14 between the qualified marketplace contractor and a qualified
15 marketplace platform.

16 (3) A written contract described in subdivision (2) must
17 include the following provisions:

18 (A) The qualified marketplace contractor:

19 (i) is engaged under the contract as an independent
20 contractor and not an employee of the qualified
21 marketplace platform; and

22 (ii) is to be treated as an independent contractor for all
23 purposes, including federal, state, and local taxation,
24 withholding, worker's compensation, and unemployment
25 insurance.

26 (B) The qualified marketplace contractor:

27 (i) is to be paid based on the performance of the qualified
28 marketplace contractor's services or other output; and

29 (ii) is not to be treated as an employee for the purpose of
30 determining the federal, state, and local tax obligations
31 of the qualified marketplace contractor or the qualified
32 marketplace platform.

33 (C) The qualified marketplace contractor may work any
34 hours or schedule that the qualified marketplace
35 contractor chooses to work, except that if the qualified
36 marketplace contractor elects to work specific hours or a
37 specific schedule, the qualified marketplace platform may
38 require the qualified marketplace contractor to perform
39 work during the elected hours or schedule.

40 (D) The qualified marketplace contractor is free to engage
41 in outside employment and to perform services through
42 other qualified marketplace platforms.



(E) The qualified marketplace contractor bears the qualified marketplace contractor's own expenses.

(F) The contract may be terminated without cause by the qualified marketplace platform or the qualified marketplace contractor at any time after reasonable notice to the other party.

Sec. 3. For the purpose of construing any statute, rule, ordinance, or resolution, including IC 22-3 and IC 22-4, the term "employment" before July 1, 2016, did not include services performed by a qualified marketplace contractor if the following conditions were met:

(1) Substantially all of the remuneration received by the qualified marketplace contractor for the services that the qualified marketplace contractor performed, whether paid in cash or some other form, was directly related to the performance of the services or other output rather than the number of hours worked.

(2) The services performed by the qualified marketplace contractor were governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform that included the provisions specified under section 2(3) of this chapter.

Sec. 4. The provisions of this chapter are severable in the manner provided by IC 1-1-1-8(b).

SECTION 2. IC 22-2-16-3, AS ADDED BY P.L.88-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. Unless federal or state law provides otherwise, a unit may not establish, mandate, or otherwise require an employer to provide to an employee who is employed within the jurisdiction of the unit:

- (1) a benefit;
- (2) a term of employment;
- (3) a working condition; or
- (4) an attendance, **scheduling**, or leave policy;

that exceeds the requirements of federal or state law, rules, or regulations.

SECTION 3. IC 22-4-17-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 3.2. (a) As used in this section, "attorney" refers to one (1) of the following:

- (1) An attorney in good standing admitted to the practice of law in Indiana.



(2) An attorney in good standing admitted to the practice of law in another state who has been granted temporary admission to the state bar under Rule 3 of the Rules for Admission to the Bar and the Discipline of Attorneys adopted by the supreme court.

(b) An employer or an employing unit having an interest in a claim for benefits pending before an administrative law judge, the review board, or other individuals who adjudicate claims may be represented by:

(1) an officer or other employee of the employer or employing unit as designated by the employer or the employing unit;

(2) an attorney;

(3) an accountant certified by and in good standing with the state; or

(4) a representative of an unemployment compensation service firm.

(c) A claimant for benefits may be represented by:

(1) the claimant in person;

(2) an attorney;

(3) an accountant certified by and in good standing with the state; or

(4) an authorized agent of a bona fide labor organization to which the claimant belonged at the time the pending claim occurred.

(d) In addition to the persons listed in subsection (c), a claimant for benefits may designate a lay person of the claimant's choice to assist the claimant in the presentation of the claimant's case to the administrative law judge, the review board, or another individual who adjudicates claims.

SECTION 4. [EFFECTIVE UPON PASSAGE] (a) Before December 1, 2016, the department of workforce development shall amend 646 ICA 5-10-18 to make the rule comply with IC 22-4-17-3.2, as added by this act.

(b) This SECTION expires on the earlier of the following:

(1) The date rules are adopted under subsection (a).

(2) December 31, 2016.

SECTION 5. [EFFECTIVE JULY 1, 2016] (a) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.

(b) The legislative council is urged to assign to the interim study committee on employment and labor established by IC 2-5-1.3-4 or another appropriate interim study committee during the 2016



- 1 legislative interim the topics of:
2 (1) employee misclassification;
3 (2) payroll fraud; and
4 (3) the use of independent contractor status.
5 (c) If the topics described in subsection (b) are assigned to an
6 interim study committee, the interim study committee shall issue
7 a final report to the legislative council containing the interim study
8 committee's findings and recommendations, including any
9 recommended legislation, in an electronic format under IC 5-14-6
10 not later than November 1, 2016.
11 (d) This SECTION expires December 31, 2016.
12 SECTION 6. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Pensions & Labor, to which was referred Senate Bill No. 20, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 20 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 8, Nays 2

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred Senate Bill 20, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 22-1-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Chapter 6. Classification of Qualified Marketplace Contractors
Sec. 1. The following definitions apply throughout this chapter:

(1) "Person" means an individual, a partnership, a corporation, a limited liability company, or other organization.

(2) "Qualified marketplace contractor" means a person that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital application or digital platform to provide services to an individual or entity that seeks to obtain the services.

(3) "Qualified marketplace platform" means a person that operates a digital application or digital platform that facilitates the provision of services by a qualified marketplace contractor to an individual or entity that seeks to obtain the services.

Sec. 2. For the purpose of construing any statute, rule, ordinance, or resolution, including IC 22-3 and IC 22-4, a qualified marketplace contractor is to be treated as an independent contractor if the following conditions are met:



(1) Substantially all of the remuneration received by the qualified marketplace contractor for the services that the qualified marketplace contractor performs, whether paid in cash or some other form, is directly related to the performance of the services or other output rather than the number of hours worked.

(2) The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform.

(3) A written contract described in subdivision (2) must include the following provisions:

(A) The qualified marketplace contractor:

- (i) is engaged under the contract as an independent contractor and not an employee of the qualified marketplace platform; and
- (ii) is to be treated as an independent contractor for all purposes, including federal, state, and local taxation, withholding, worker's compensation, and unemployment insurance.

(B) The qualified marketplace contractor:

- (i) is to be paid based on the performance of the qualified marketplace contractor's services or other output; and
- (ii) is not be treated as an employee for the purpose of determining the federal, state, and local tax obligations of the qualified marketplace contractor or the qualified marketplace platform.

(C) The qualified marketplace contractor may work any hours or schedule that the qualified marketplace contractor chooses to work, except that if the qualified marketplace contractor elects to work specific hours or a specific schedule, the qualified marketplace platform may require the qualified marketplace contractor to perform work during the elected hours or schedule.

(D) The qualified marketplace contractor is free to engage in outside employment and to perform services through other qualified marketplace platforms.

(E) The qualified marketplace contractor bears the qualified marketplace contractor's own expenses.

(F) The contract may be terminated without cause by the qualified marketplace platform or the qualified marketplace contractor at any time after reasonable notice



to the other party.

Sec. 3. For the purpose of construing any statute, rule, ordinance, or resolution, including IC 22-3 and IC 22-4, the term "employment" before July 1, 2016, did not include services performed by a qualified marketplace contractor if the following conditions were met:

- (1) Substantially all of the remuneration received by the qualified marketplace contractor for the services that the qualified marketplace contractor performed, whether paid in cash or some other form, was directly related to the performance of the services or other output rather than the number of hours worked.
- (2) The services performed by the qualified marketplace contractor were governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform that included the provisions specified under section 2(3) of this chapter.

Sec. 4. The provisions of this chapter are severable in the manner provided by IC 1-1-1-8(b)."

Page 1, after line 12, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2016] (a) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.

(b) The legislative council is urged to assign to the interim study committee on employment and labor established by IC 2-5-1.3-4 or another appropriate interim study committee during the 2016 legislative interim the topics of:

- (1) employee misclassification;
- (2) payroll fraud; and
- (3) the use of independent contractor status.

(c) If the topics described in subsection (b) are assigned to an interim study committee, the interim study committee shall issue a final report to the legislative council containing the interim study committee's findings and recommendations, including any recommended legislation, in an electronic format under IC 5-14-6 not later than November 1, 2016.



(d) This SECTION expires December 31, 2016."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 20 as printed January 8, 2016.)

GUTWEIN

Committee Vote: yeas 9, nays 4.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 20 be amended to read as follows:

Page 3, between lines 36 and 37, begin a new paragraph and insert:
 "SECTION 3. IC 22-4-17-3.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: **Sec. 3.2. (a) As used in this section, "attorney" refers to one (1) of the following:**

(1) An attorney in good standing admitted to the practice of law in Indiana.

(2) An attorney in good standing admitted to the practice of law in another state who has been granted temporary admission to the state bar under Rule 3 of the Rules for Admission to the Bar and the Discipline of Attorneys adopted by the supreme court.

(b) An employer or an employing unit having an interest in a claim for benefits pending before an administrative law judge, the review board, or other individuals who adjudicate claims may be represented by:

(1) an officer or other employee of the employer or employing unit as designated by the employer or the employing unit;

(2) an attorney;

(3) an accountant certified by and in good standing with the state; or

(4) a representative of an unemployment compensation service firm.

(c) A claimant for benefits may be represented by:

(1) the claimant in person;

(2) an attorney;

(3) an accountant certified by and in good standing with the state; or



(4) an authorized agent of a bona fide labor organization to which the claimant belonged at the time the pending claim occurred.

(d) In addition to the persons listed in subsection (c), a claimant for benefits may designate a lay person of the claimant's choice to assist the claimant in the presentation of the claimant's case to the administrative law judge, the review board, or another individual who adjudicates claims.

SECTION 4. [EFFECTIVE UPON PASSAGE] (a) Before December 1, 2016, the department of workforce development shall amend 646 ICA 5-10-18 to make the rule comply with IC 22-4-17-3.2, as added by this act.

(b) This SECTION expires on the earlier of the following:

(1) The date rules are adopted under subsection (a).

(2) December 31, 2016."

Page 4, after line 11, begin a new paragraph and insert:
"SECTION 6. **An emergency is declared for this act.**".
Renumber all SECTIONS consecutively.

(Reference is to ESB 20 as printed February 16, 2016.)

AUSTIN

